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HOLLY A. HOUSE (SBN 136045)   SA	2.	DONN P. PICKETT (SBN 72257) GEOFFREY M. HOWARD (SBN 157468)	Jason McDonell (SBN 115084) Flaine Wallace (SBN 197882)
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4 Three Embarcadero Center San Francisco, CA 94111-4067 5 Telephone: (415) 393-2000 Facsimile: (415) 393-2286 donn,incket(@bingham.com geoff.howard@bingham.com normal particles and provided p	3		555 California Street, 26 <sup>th</sup> Floor
San Francisco, CA, 94111-4067   Facsimile: (415) 393-2000   ramittelstaedt@jonesday.com   rami	1		
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Facsimile: (415) 393-2286   jmcdonell@jonesday.com   ewallace@jonesday.com   ewallace@jonesday.com   ewallace@jonesday.com   ewallace@jonesday.com   ewallace@jonesday.com   ewallace@jonesday.com   ewallace@jonesday.com   ewallace@jonesday.com   fmran Gregory Lanier (SBN 138784)   Jane L. Froyd (SBN 220776)   Jones DAY   Jones	5		
geoff howard@bingham.com   zachary.alinder@bingham.com   Jane L. Froyd (SBN 220776)   Jones DAY   Jo			
Tharan Gregory Lanier (SBN 138784)   Jane L. Froyd (SBN 220776)   JONES DAY   1755 Embarcadero Road   Palo Alto, CA 94303   Telephone: (650) 739–3939   Facsimile: (650) 739–3930   Facsimile: (914) 749-8200   Facsimile: (914) 749-8300   Jones @bsflp.com   STEVEN C. HOLTZMAN (SBN 144177)   13   1999 Harrison St., Suite 900   Oakland, CA 94612   717 Teas, Suite 3300   Houston, TX 77002   Telephone: (510) 874-1460   Facsimile: (510) 874-1460   Facsimile: (510) 874-1460   Facsimile: (650) 506-7114   dorian daley@oracle.com   jennifer.gloss@oracle.com   jennifer.gloss@oracle.com   jennifer.gloss@oracle.com   Jones District Court Northern District Of California Aley@oracle.com   Northern District Of California OakLand Division   Northern District Of California OakLand Division   Northern OakLan	6		ewallace@jonesday.com
Sachary.alinder@bingham.com   Jane L. Froyd (SBN 220776)	7		Theran Gregory Lanier (SBN 138784)
Boiles, SCHILLER & FLEXNER LLP DAVID BOIES (Admitted Pro Hac Vice)   1755 Embarcadero Road   Palo Alto, CA 94303   Telephone: (650) 739–3939   Facsimile: (650) 739–3930   tglanier@jonesday.com   fracimile: (914) 749-8200   Facsimile: (914) 749-8200   Facsimile: (914) 749-8200   Facsimile: (914) 749-8300   tglanier@jonesday.com   fracimile: (914) 749-8300   tglanier@jonesday.com   fracimile: (914) 749-8300   tglanier@jonesday.com   fracimile: (916) 874-1000   STEVEN C. HOLTZMAN (SBN 144177)   Jones DAY   Jones DAY   Jones DAY   Jones DAY   Telephone: (510) 874-1460   Facsimile: (510) 874-1460   Facsimile: (510) 874-1460   Facsimile: (510) 874-1460   Facsimile: (832) 239-3600   swcowan@jonesday.com   jfluchs@jonesday.com   jf	,		
Palo Alto, CA 94303   Telephone: (650) 739–3939   Facsimile: (650) 739–3939   Facsimile: (650) 739–3900   Telephone: (914) 749-8200   Telephone: (914) 749-8200   Telephone: (914) 749-8300   Telephone: (916) 739-3900   Telephone: (916) 739-3900   Telephone: (916) 739-3900   Telephone: (916) 739-3000   Telephone: (916) 874-1000   Telephone: (916) 874-1460   Telephone: (916) 874-1460   Telephone: (832) 239-3939   Teleph	8		
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Armonk, NY 10504 Telephone: (914) 749-8200 Facsimile: (914) 749-8300 dboies@bsflp.com STEVEN C. HOLTZMAN (SBN 144177) 13 1999 Harrison St., Suite 900 Oakland, CA 94612 Telephone: (510) 874-1000 Facsimile: (510) 874-1460 Sholtzman@bsflp.com  16 DORIAN DALEY (SBN 129049) JENNIFER GLOSS (SBN 154227) 500 Oracle Parkway, M/S 50p7 Redwood City, CA 94070 Telephone: (650) 506-4846 Facsimile: (650) 506-7114 dorian.daley@oracle.com jennifer.gloss@oracle.com  20 Attorneys for Plaintiffs Oracle USA, Inc. et al.  21 Attorneys for Plaintiffs Oracle USA, Inc. et al.  22 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION  24 ORACLE USA, INC., et al.,  No. 07-CV-01658 PJH (EDL)  25 Plaintiffs,  v.  TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	10		
Telephone: (914) 749-8200   Facsimile: (914) 749-8300   Facsimile: (914) 749-8300   Scott W. Cowan (Admitted Pro Hac Vice)   Joshua L. Fuchs (Admitted Pro	10		· /
Facsimile: (914) 749-8300 dboies@bsfllp.com STEVEN C. HOLTZMAN (SBN 144177) 13 1999 Harrison St., Suite 900 Oakland, CA 94612 Telephone: (510) 874-1000 Facsimile: (510) 874-1460 Sholtzman@bsfllp.com Facsimile: (510) 874-1460 Tolephone: (510) 874-1460 Facsimile: (832) 239-3939 Facsimile: (832) 239-3600 Swcowan@jonesday.com JENNIFER GLOSS (SBN 154227) Toloo Oracle Parkway, M/S 5op7 Redwood City, CA 94070 Redwood City, CA 94070 Telephone: (650) 506-4846 Telephone: (650) 506-7114 dorian.daley@oracle.com jennifer.gloss@oracle.com jennifer.gloss@oracle.com  20 Attorneys for Plaintiffs Oracle USA, Inc. et al.  21 Attorneys for Plaintiffs Oracle USA, Inc. et al.  22 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION  23 ORACLE USA, INC., et al.,  V.  Blaintiffs, V.  TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	11		
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14         Telephone: (510) 874-1000         Houston, TX 77002           Facsimile: (510) 874-1460         Telephone: (832) 239–3939           15         sholtzman@bsfllp.com         Facsimile: (832) 239–3600           16         DORIAN DALEY (SBN 129049)         jlfuchs@jonesday.com           17         500 Oracle Parkway, M/S 5op7         Attorneys for Defendants           Redwood City, CA 94070         SAP AG, SAP AMERICA, INC., and           Telephone: (650) 506-4846         TOMORROWNOW, INC.           19         Attorneys for Plaintiffs           Oracle USA, Inc. et al.         UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA           23         UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA           24         ORACLE USA, INC., et al.,         No. 07-CV-01658 PJH (EDL)           25         Plaintiffs,         TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1           26         REGARDING LIABILITY, DISMISSAL           26         SAP AG, et al.,         OF CLAIMS, PRESERVATION OF	12		
14         Telephone: (510) 874-1000 Facsimile: (510) 874-1460         Houston, TX 77002 Telephone: (832) 239–3939           15         sholtzman@bsfilp.com         Facsimile: (832) 239–3600 swcowan@jonesday.com           16         DORIAN DALEY (SBN 129049) JENNIFER GLOSS (SBN 154227)         jlfuchs@jonesday.com           17         500 Oracle Parkway, M/S 5op7 Redwood City, CA 94070         Attorneys for Defendants SAP AG, SAP AMERICA, INC., and TOMORROWNOW, INC.           18         Telephone: (650) 506-4846         TOMORROWNOW, INC.           19         Attorneys for Plaintiffs Oracle USA, Inc. et al.         UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION           22         UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION           24         ORACLE USA, INC., et al.,         No. 07-CV-01658 PJH (EDL)           25         Plaintiffs,         TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	13		
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sholtzman@bsfllp.com  Facsimile: (832) 239–3600 swcowan@jonesday.com  JENNIFER GLOSS (SBN 154227) 500 Oracle Parkway, M/S 5op7 Redwood City, CA 94070 SAP AG, SAP AMERICA, INC., and Telephone: (650) 506-4846 TomORROWNOW, INC.  Attorneys for Defendants SAP AG, SAP AMERICA, INC., and TOMORROWNOW, INC.  Attorneys for Plaintiffs Oracle USA, Inc. et al.  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION  ORACLE USA, INC., et al.,  Plaintiffs, V.  Plaintiffs, V.  SAP AG, et al.,  Facsimile: (832) 239–3600 swcowan@jonesday.com jfluchs@jonesday.com attorneys for Defendants SAP AG, SAP AMERICA, INC., and TOMORROWNOW, INC.  TOMORROWN			
16 DORIAN DALEY (SBN 129049) JENNIFER GLOSS (SBN 154227) 500 Oracle Parkway, M/S 5op7 Redwood City, CA 94070 SAP AG, SAP AMERICA, INC., and Telephone: (650) 506-4846 Telephone: (650) 506-7114 dorian.daley@oracle.com  20 Attorneys for Plaintiffs Oracle USA, Inc. et al.  21 Attorneys for Plaintiffs Oracle USA, Inc. et al.  22 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION  24 ORACLE USA, INC., et al.,  No. 07-CV-01658 PJH (EDL)  25 Plaintiffs, V.  16 PROPOSED ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	15	sholtzman@bsfllp.com	
JENNIFER GLOSS (SBN 154227) 500 Oracle Parkway, M/S 5op7 Redwood City, CA 94070 Telephone: (650) 506-4846 ToMORROWNOW, INC.  19 Attorneys for Plaintiffs Oracle USA, Inc. et al. 21 ORACLE USA, INC., et al.,  V. 26 Plaintiffs, V. SAP AG, SAP AMERICA, INC., and TOMORROWNOW, INC.  Attorneys for Plaintiffs Oracle USA, Inc. et al.,  No. 07-CV-01658 PJH (EDL)  TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	16		
17 500 Oracle Parkway, M/S 5op7 Redwood City, CA 94070 Telephone: (650) 506-4846 Facsimile: (650) 506-7114 dorian.daley@oracle.com jennifer.gloss@oracle.com  20 Attorneys for Plaintiffs Oracle USA, Inc. et al.  21 WNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA 23 OAKLAND DIVISION  24 ORACLE USA, INC., et al.,  V.  26 Plaintiffs, V.  SAP AG, et al.,  Attorneys for Defendants SAP AG, SAP AMERICA, INC., and TOMORROWNOW, INC.	10		jirucns@jonesday.com
Redwood City, CA 94070 Telephone: (650) 506-4846 Facsimile: (650) 506-7114 dorian.daley@oracle.com jennifer.gloss@oracle.com  21 Attorneys for Plaintiffs Oracle USA, Inc. et al. 22 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA 23 OAKLAND DIVISION  24 ORACLE USA, INC., et al.,  V.  Plaintiffs, V.  SAP AĞ, SAP AMERICA, INC., and TOMORROWNOW, INC.  TOMOR OF CALIFICATION AND INC.  TOMORROWNOW, INC.  TOMOR OF CALIFICATION AND INC.	<b>17</b>		Attorneys for Defendants
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dorian.daley@oracle.com jennifer.gloss@oracle.com  Attorneys for Plaintiffs Oracle USA, Inc. et al.  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION  ORACLE USA, INC., et al.,  Plaintiffs, V.  SAP AG, et al.,  V.  IND. 07-CV-01658 PJH (EDL)  TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	18		
20 Jennifer.gloss@oracle.com  21 Attorneys for Plaintiffs Oracle USA, Inc. et al.  22 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA 23 OAKLAND DIVISION  24 ORACLE USA, INC., et al.,  25 Plaintiffs, V.  26 Plaintiffs, V.  27 TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	10		
21 Attorneys for Plaintiffs Oracle USA, Inc. et al.  22 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA 23 OAKLAND DIVISION  24 ORACLE USA, INC., et al.,  Plaintiffs, V.  26 Plaintiffs, V.  SAP AG, et al.,  Attorneys for Plaintiffs Oracle USA, Inc. et al.  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION  TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	1)		
Oracle USA, Inc. et al.  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION  ORACLE USA, INC., et al.,  Plaintiffs, v.  Plaintiffs, v.  SAP AG, et al.,  ORACLE USA, Inc. et al.,  Plaintiffs, v.  TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	20	Jenniter.gross@oracle.com	
Oracle USA, Inc. et al.  UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION  ORACLE USA, INC., et al.,  Plaintiffs, v.  Plaintiffs, v.  SAP AG, et al.,  ORACLE USA, Inc. et al.,  Plaintiffs, v.  TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	21	Attorneys for Plaintiffs	
NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION  ORACLE USA, INC., et al.,  Plaintiffs, v.  Plaintiffs, v.  SAP AG, et al.,  No. 07-CV-01658 PJH (EDL)  TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	21		
NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION  ORACLE USA, INC., et al.,  Plaintiffs, v.  Plaintiffs, v.  SAP AG, et al.,  No. 07-CV-01658 PJH (EDL)  TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	22	UNITED STATES	S DISTRICT COURT
24 ORACLE USA, INC., et al.,  Plaintiffs,  V.  26 SAP AG, et al.,  No. 07-CV-01658 PJH (EDL)  TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF		NORTHERN DISTR	CICT OF CALIFORNIA
25 Plaintiffs, v. [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	23	OAKLAN	D DIVISION
25 Plaintiffs, v. [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	24	ORACLEUSA INC. et al.	No. 07-CV-01658 PIH (FDI.)
V. [PROPOSED] ORDER NO. 1 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF		ORNELL USA, INC., et ut.,	140. 07-C V-01030 1311 (LDL)
26 REGARDING LIABILITY, DISMISSAL OF CLAIMS, PRESERVATION OF	25		
SAP AG, et al.,  OF CLAIMS, PRESERVATION OF	26	V.	
	-0	SAP AG, et al	
DETERMED, IN AD OBJECTION TO	<b>27</b>		DEFENSES, AND OBJECTIONS TO
Defendants. <b>EVIDENCE AT TRIAL</b>	20	Defendants.	
07-CV-01658 PJH (EDL)	40		07-CV-01658 PJH (EDL)

1	Pursuant to Local Rule 7-12, Plaintiffs Oracle USA, Inc., Oracle International		
2	Corporation and Siebel Systems, Inc. ("Plaintiffs" or "Oracle") and Defendants TomorrowNow,		
3	Inc. ("TN"), SAP AG and SAP America, Inc. ("SAP"; and, together with TN, "Defendants";		
4	and, all together with Oracle, the "Parties"), jointly submit this Trial Stipulation and [Proposed]		
5	Order regarding liability, dismissal of certain claims, the preservation of certain defenses,		
6	objections to evidence at trial, and the length of the Parties' evidentiary presentations and		
7	arguments.		
8	The Parties agree that the terms of this stipulation shall not be binding or effective		
9	unless and until the Court accepts the stipulated terms in their entirety. The Parties reserve the		
10	right to withdraw agreement to any or all terms if the Court chooses not to accept any term.		
11	NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE,		
12	through their respective counsel of record, as follows:		
13	TRIAL STIPULATION AND PROPOSED ORDER		
14	1. TN stipulates to all liability on all claims (preserving no defenses,		
15	including any raised on summary judgment, but retaining all defenses to damages as described in		
16	paragraph 5 below). TN therefore stipulates to all liability on Oracle's claims for copyright		
17	infringement, violations of the Federal Computer Fraud and Abuse Act and California's		
18	Computer Data Access and Fraud Act, breach of contract, intentional interference, negligent		
19	interference, unfair competition, trespass to chattels, unjust enrichment/restitution and an		
20	accounting. SAP will not contend that Oracle has failed to prove indirect liability as to SAP due		
21	to a failure of proof against TN.		
22	2. SAP stipulates to vicarious liability on the copyright claims against TN in		
23	their entirety (preserving no defenses, including any raised on summary judgment, but retaining		
24	all defenses as to damages as described in paragraph 5 below) and agrees to guarantee payment		
25	of any judgment awarded against TN or SAP.		
26	3. Oracle dismisses with prejudice all claims against SAP except for indirect		
27	copyright infringement and except as to any right to appeal any rulings made by the trial court		
28	(e.g., saved development costs as a basis for unjust enrichment), which Oracle preserves for all		

1	purposes. Oracle therefore retains claims against SAP for contributory copyright infringement,		
2	to which SAP retains all pleaded defenses, including as described in paragraph 5 below, at the		
3	trial scheduled for November 1, 2010.		
4	4. The Parties envision that the jury will be instructed, and the jury verdict		
5	form will reflect, that the Parties have stipulated to liability for certain claims against TN and		
6	SAP as set forth in paragraphs 1 and 2 above (which the parties may refer to at any time during		
7	trial). Subject only to the trial time limits set forth in paragraph 8 below, the Parties may present		
8	evidence at trial related to the stipulated claims as background or context for the stipulated		
9	claims, and/or as relevant to damages or other claims and defenses not stipulated to or dismissed		
10	by the Parties. The Parties will not object to evidence related to the stipulated claims pursuant to		
11	Federal Rules of Evidence 401-403 (including that the evidence is irrelevant, cumulative, unduly		
12	time consuming or prejudicial) on grounds that the evidence relates to the stipulated claims.		
13	Oracle may not argue to the Court, jury or public that SAP is in fact liable on claims that Oracle		
14	agrees to dismiss under paragraph 3, or not pursue under paragraph 7, and SAP may not argue to		
15	the Court, jury or public that either (i) TN in fact is not liable on claims stipulated under		
16	paragraph 1, or (ii) SAP in fact is not liable on the basis of vicarious liability as stipulated under		
17	paragraph 2.		
18	5. SAP and TN retain all defenses to the alleged causation, fact or amount of		
19	or entitlement to disgorgement, actual or punitive damages or any other legal or equitable		
20	remedy. For example, on some claim as to which TN had elected not to contest liability, it may		
21	still argue that a particular remedy is not available.		
22	6. The Parties preserve their rights to appeal any judgment against them		
23	except as to issues or claims to which they have stipulated.		
24	7. Punitive damages remain in the case as to TN. Oracle agrees not to seek		
25	punitive damages against SAP in this case, provided, however, that Oracle may enforce SAP's		
26	guarantee to pay any award of punitive damages against TN.		
27	8. The length of trial is shortened to 36 hours per side for presentation of		
28	testimony and argument to the jury.		

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1	9. Defendants agree to entry of an injunction enjoining TN from:		
2	(1) infringing Oracle's copyrights in Oracle's PeopleSoft-branded enterprise application		
3	software, J.D. Edwards-branded enterprise application software, Siebel-branded enterprise		
4	application software, and Oracle's Relational Database Management System software, and		
5	related support products; (2) accessing any password-protected Oracle website in any way not		
6	compliant with the Terms of Use for that website or with the customer license associated with		
7	the log-in credential being used; (3) using any automated downloading program (including Titan,		
8	spiders, bots, crawlers and scrapers) on any Oracle website; and (4) interfering with Oracle's		
9	customers by offering support for their Oracle products using software or downloads obtained		
10	from a different customer generally directed at the stipulated conduct.		
11	10. The Parties reach this stipulation for purposes of this action only, and this		
12	stipulation has no force or effect in any other proceeding or jurisdiction.		
13	IT IS SO STIPULATED.		
14	DATED: September 9, 2010 BINGHAM McCUTCHEN LLP		
15	By: /s/ Geoffrey M. Howard		
16	Geoffrey M. Howard		
17	Attorneys for Plaintiffs Oracle USA, Inc., Oracle International		
18	Corporation and Siebel Systems, Inc.  In accordance with General Order No. 45, Rule V, the above signetery ettests that		
19	In accordance with General Order No. 45, Rule X, the above signatory attests that		
20	concurrence in the filing of this document has been obtained from the signatory below.		
21	DATED: September 9, 2010 JONES DAY		
22	By:/s/ Jason McDonell		
23	Jason McDonell Attorneys for Defendants		
24	SAP AG, SAP America, Inc., and TomorrowNow, Inc.		
25	PURSUANT TO STIPULATION, IT IS SO ORDERED.		
26	Dated: September 13, 2010		
27	TIT IS SO ORDERED		
28	Phyllis J. Han United States Distribution Stat		
	3 07-CV-01658 PAYEDL)		
	TRIAL STIPULATION AND [PROPOSED] ORDER NO. 1		